Introduction

Some men arrive. They force their way into a family's home, rich or poor, house, hovel or hut, in a city or in a village, anywhere. They come at any time of the day or night, usually in plain clothes, sometimes in uniform, always carrying weapons. Giving no reasons, producing no arrest warrant, frequently without saying who they are or on whose authority they are acting, they drag off one or more members of the family towards a car, using violence in the process if necessary.*

This is often the first act in the drama of an enforced or involuntary disappearance, a particularly heinous violation of human rights. According to the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, an enforced disappearance occurs when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law".

A disappearance is a doubly paralyzing form of suffering: for the victims, frequently tortured and in constant fear for their lives, and for their family members, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come. The victims are well aware that their families do not know what has become of them and that the chances are slim that anyone will come to their aid. Having been removed from the protective precinct of the law and "disappeared" from society, they are in fact deprived of all their rights and are at the mercy of their captors. If death is not the final outcome and they are eventually released from the nightmare, the victims may suffer for a long time from the physical and psychological consequences of this form of dehumanization and from the brutality and torture which often accompany it.

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* Report entitled "Disappeared! Technique of Terror", prepared by the Independent Commission on International Humanitarian Issues, London, 1986.

The family and friends of disappeared persons experience slow mental torture, not knowing whether the victim is still alive and, if so, where he or she is being held, under what conditions, and in what state of health. Aware, furthermore, that they too are threatened; that they may suffer the same fate themselves, and that to search for the truth may expose them to even greater danger.

The family's distress is frequently compounded by the material consequences resulting from the disappearance. The missing person is often the mainstay of the family's finances. He or she may be the only member of the family able to cultivate the crops or run the family business. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search. Furthermore, they do not know when—if ever — their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to receive pensions or other means of support in the absence of a certificate of death. Economic and social marginalization is frequently the result.

I. Rights violated by the practice of disappearances

The practice of enforced disappearance of persons infringes upon an entire range of human rights embodied in the Universal Declaration of Human Rights and set out in both International Covenants on Human Rights as well as in other major international human rights instruments.

Disappearances can also involve serious violations of the Standard Minimum Rules for the Treatment of Prisoners, approved by the United Nations Economic and Social Council in 1957, as well as of the Code of Conduct for Law Enforcement Officials and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1979 and 1988 respectively. The following individual rights may also be infringed upon in the course of a disappearance:

The right to recognition as a person before the law;

The right to liberty and the security of the person;

The right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;

The right to life.

Disappearances generally violate the right to a family life as well as various economic, social and cultural rights such as the right to an adequate standard of living and the right to education. In fact, it has been found that the disappearance of the family's main economic support, particularly in less affluent societies, frequently leaves the family in a desperate socio-economic situation in which the majority of the rights enumerated in the International Covenant on Economic, Social and Cultural Rights cannot be realized.

The serious economic hardships which usually accompany a disappearance are most often borne by women. When women are the victims of disappearance they become particularly vulnerable to sexual and other forms of violence. In addition, it is women who are most often at the forefront of the struggle to resolve the disappearances of members of their family. In this capacity they may suffer intimidation, persecution and reprisals.

Children are also involved in disappearances, both directly and indirectly. The disappearance of a child is a clear contravention of a number of provisions of the Convention on the Rights of the Child, including the right to a personal identity. The loss of a parent through disappearance is also a serious violation of a child's human rights.

II. Working Group on Enforced or Involuntary Disappearances

Given the grave nature of disappearances, the United Nations General Assembly devoted particular attention to this odious phenomenon. In 1979, in resolution 33/173 entitled "Disappeared persons", in which it expressed concern over reports from various parts of the world relating to enforced or involuntary disappearances of persons, the Assembly requested the United Nations Commission on Human Rights to consider the question and to make appropriate recommendations. At that time the Assembly also called upon Governments to devote appropriate resources to undertake rapid and impartial investigations into cases of enforced or involuntary disappearances and to ensure that law

enforcement and security authorities were fully accountable, especially in law, in the discharge of their duties. Such accountability would include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights.

By resolution 20 (XXXVI) of 29 February 1980, the Commission on Human Rights decided to "establish for a period of one year a working group consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons". Since then, the mandate and terms of reference of the Working Group have been renewed by the Commission and approved by the Economic and Social Council each year. Since 1986 this has been done biennially and, since 1992, on a three-yearly basis.

The establishment in 1980 of the Working Group on Enforced or Involuntary Disappearances by the Commission on Human Rights, inspired by the General Assembly, was the first thematic mechanism set up within the framework of the United Nations Human Rights Programme to deal with specific violations of human rights of a particularly serious nature occurring on a global scale. Previous to that, working groups and special rapporteurs had been appointed only to deal with the human rights situation in a given country or territory.

Subsequent years have seen the establishment, by the Commission or the Secretary-General, of other so-called thematic procedures in related fields, such as the appointment of special rapporteurs/representatives on extrajudicial, summary or arbitrary executions; the question of torture; the independence of judges and lawyers; internally displaced persons; freedom of opinion and expression; violence against women; intolerance and discrimination based on religion or belief; racism, racial discrimination and xenophobia; the effects of toxic and dangerous products on the enjoyment of human rights; the sale of children, child prostitution and child pornography; the use of mercenaries; and the establishment of the Working Group on Arbitrary Detention.

Since its inception, the Working Group on Enforced or Involuntary Disappearances has dealt with some 50,000 individual cases pertaining to more than 70 countries. For reasons well beyond the scope of the Working Group, only a fraction of those cases have been clarified. Nevertheless, the extent to which the Working Group, through its patient and persistent contacts with the Governments concerned, may have prevented more cases from occurring cannot be quantified. The fact that it was able to contribute to the clarification of cases, especially within the framework of its urgent action procedure (see below), and

thus possibly to the saving of human lives, has been considered sufficient reason for its continued activity. Moreover, the mechanism of the Working Group should be seen as a reflection of international concern and action. It should equally be seen as forming part of a long-term process leading to the elimination of major human rights violations, a process which includes the creation of widespread public awareness of human rights-related issues and the provision of advisory services and technical assistance to Governments for the promotion and protection of human rights.

In its annual resolutions on the subject the Commission on Human Rights has endorsed the Working Group's methods of work and the humanitarian spirit underlying its mandate. It has urged the Governments concerned to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected and encouraged them to give serious consideration to inviting the Working Group to visit their country. It also stressed the importance of publicizing the objectives, procedures and methods of the Working Group within the framework of the information activities of the United Nations Centre for Human Rights.

The Commission has also requested the Working Group to take action in connection with acts of intimidation or reprisals against relatives of missing persons and private individuals or groups who seek to cooperate or have cooperated with United Nations human rights bodies, or who have provided testimony or information to them, as well as persons who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms or persons who have provided legal assistance to others for that purpose.

Activities of the Working Group

The Working Group's basic mandate is to assist the relatives of disappeared persons to ascertain the fate and whereabouts of their missing family members. For this purpose the Group receives and examines reports of disappearances submitted by relatives of missing persons or human rights organizations acting on their behalf. After determining whether those reports comply with a number of criteria, the Working Group transmits individual cases to the Governments concerned, requesting them to carry out investigations and to inform the Working Group of the results. The Working Group deals with the numerous individual cases of human rights violations on a purely hu-

manitarian basis, irrespective of whether the Government concerned has ratified any of the existing legal instruments which provide for an individual complaints procedure. It acts essentially as a channel of communication between the families of missing persons and Governments, and has successfully developed a dialogue with the majority of Governments concerned with the aim of solving cases of disappearance.

With a view to preventing irreparable damage, the Working Group has also established an urgent action procedure under which the Working Group's Chairman is authorized to act on reported cases of disappearance occurring in between the Group's sessions, thus helping to avoid any delays in its attempts to save lives.

Cases of intimidation, persecution or reprisals against relatives of missing persons, witnesses to disappearances or their families, members of organizations of relatives and other non-governmental organizations or individuals concerned with disappearances are also transmitted to the pertinent Governments, with an appeal to take the necessary steps to protect all the fundamental rights of the persons concerned.

The Working Group meets three times a year for five to eight working days, once in New York and twice in Geneva. The Group's meetings are held in private. However, the Working Group regularly invites representatives of Governments, non-governmental organizations, family members and witnesses to meet with it. Following each session, the Working Group informs Governments, in writing, of decisions taken with regard to disappearances in their country. It reminds Governments, at least once a year, of the total number of cases transmitted in the past which have not yet been clarified. Twice a year it reminds Governments of urgent action cases sent during the preceding six months for which no clarification has been received.

The Working Group reports annually to the Commission on Human Rights on the activities it has carried out since the Commission's previous session, up until the last day of the Working Group's third annual session. It informs the Commission of its communications with Governments and non-governmental organizations, its meetings and its missions. The Working Group reports on all cases of disappearance received by the Group during the year, on a country-by-country basis, and on the decisions it has taken thereon. It provides the Commission with a statistical summary for each country of cases transmitted to the Government, clarifications made and the status of the person concerned on the date of clarification. It includes graphs showing the develop-

ment of the phenomenon of disappearance in countries with more than 50 transmitted cases, up to the date of the adoption by the Working Group of its annual report. The Working Group includes conclusions and recommendations in its report, and makes observations on the situation of disappearances in individual countries. Since 1993, the Group also has reported on the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance and the obstacles encountered therein, and periodically reports on broader issues surrounding the phenomenon of disappearance.

Methods of work of the Working Group

The methods of work of the Working Group are based on its mandate as stipulated in Commission on Human Rights resolution 20 (XXXVI) and are specifically geared to its main objective: to assist families in determining the fate and whereabouts of their missing relatives who, having disappeared, are outside the protection of the law. To this end, the Working Group endeavours to establish a channel of communication between the families and the Governments concerned, seeking to ensure that sufficiently documented and clearly identified individual cases which the families, directly or indirectly, have brought to the Working Group's attention are investigated and the whereabouts of the missing person clarified.

The Working Group's role ends when the fate and whereabouts of the missing person have been clearly established as a result of investigations by the Government or the family, irrespective of whether that person is alive or dead. At that point the Working Group no longer concerns itself with the question of determining responsibility for specific cases of disappearance or for other human rights violations which may have occurred in the course of a disappearance; its work on this individual level is of a strictly humanitarian nature.

The Working Group's action is based on the principle that the State is responsible for human rights violations committed within its territory and is obligated to prevent such violations or to investigate them when they have occurred. As with all other situations of State responsibility, such responsibility continues to exist irrespective of changes of Government.

The Working Group does not deal with situations of international armed conflict, in view of the competence of the International Committee of the Red Cross (ICRC) in such situations, as determined by the

Geneva Conventions of 12 August 1949 and their Additional Protocols of 1977. Further information on these conventions may be found in Fact Sheet No. 13: *International Humanitarian Law and Human Rights.*

In considering cases of disappearance, the Working Group deals exclusively with Governments because, as explained above, Governments must, as a matter of principle, assume responsibility for violations of human rights occurring on their territory. The Working Group will not consider cases of abductions which are not directly or indirectly attributable to a Government. It will therefore not process individual cases of disappearances perpetrated by irregular or insurgent groups fighting a Government on its own territory. Nevertheless, when studying the situation of disappearances in a particular country or examining the phenomenon of disappearance in a general way, the Working Group considers that information on all disappearances is relevant to a proper evaluation.

Admissibility

For a report of a disappearance to be considered admissible by the Working Group, it must originate from the family or friends of the missing person. Such reports may also be channelled to the Working Group through representatives of the family, Governments, intergovernmental organizations, humanitarian organizations and other reliable sources. They must be submitted in writing with a clear indication of the identity of the sender. If the source is other than a family member, it must be in a position to follow up with the relatives of the disappeared person concerning his or her fate.

In order to enable the Governments named in the reports to carry out meaningful investigations, the Working Group provides them with information containing at least a minimum of basic data. In addition, the Working Group constantly urges the sources of reports to furnish as many details as possible on the identity of the missing person (even, if available, the identity card number) and the circumstances of the disappearance. The following minimum elements are required:

(*a*) Full name of the missing person;

(*b*) Date of disappearance, i.e. day, month and year of arrest or abduction or day, month and year when the missing person was last

seen. If the missing person was last seen in a detention centre, an approximate indication is sufficient;

(*c*) Place of arrest or abduction or where the missing person was last seen (at least an indication of the town or village);

(*d*) Parties presumed to have carried out the arrest or abduction or to hold the missing person in unacknowledged detention; and

(*e*) Steps taken to determine the fate or whereabouts of the missing person, or at least an indication that efforts to use domestic remedies were frustrated or otherwise inconclusive.

Handling of cases

Reported cases of disappearance are placed before the Working Group for detailed examination during its sessions. Those which fulfil the requirements as outlined above are transmitted, with the Working Group's specific authorization, to the Governments concerned, with a request to carry out investigations and to inform the Working Group of the results.

The cases are normally communicated by letter from the Working Group's Chairman to the Government concerned through that Government's Permanent Representative to the United Nations. However, cases that occurred within three months preceding the receipt of the report of the disappearance by the Working Group are transmitted directly to the Minister for Foreign Affairs of the country concerned by the most direct and rapid means. This is referred to as the *urgent action procedure*. Such communications can be authorized by the Chairman on the basis of specific authority delegated to him by the Working Group. Cases which occurred prior to the three-month limit but not more than one year before the date of their receipt by the secretariat can be transmitted between sessions by letter, upon authorization by the Chairman, provided that they have some connection with a case which occurred within the three-month period.

Reports indicating that officials from more than one country were directly responsible for or involved in a disappearance are communicated to both the Government of the country where the disappearance occurred and the Government of the country whose officials or agents were alleged to have participated in the arrest or abduction of the missing person. However, in any general evaluation of disappearances in a given country which may be made, such cases are attributed to the

country in which the person was reportedly held in detention or last seen.

In cases of the disappearance of a pregnant woman, the child presumed to have been born during the mother's captivity is mentioned in the description of the mother's case. The child is treated as a separate case when witnesses have reported that the mother actually gave birth during her detention.

The Working Group reminds every Government concerned at least once a year of the cases which have not yet been clarified, and twice a year of all urgent action cases transmitted during the preceding six months for which no clarification has been received. Furthermore, at any time during the year any Government may request, in writing, the summaries of cases that the Group has transmitted to it.

Replies from Governments and clarification of cases

Any reply from the Government containing detailed information on the fate and whereabouts of a disappeared person is transmitted to the source. If the source does not respond within six months of the date on which the Government's reply was communicated to it, or if it contests the Government's information on grounds which are considered unreasonable by the Working Group, the case is considered clarified and is accordingly listed under the heading "Cases clarified by the Government's response" in the statistical summary of the annual report. If the source contests the Government's information on reasonable grounds, the Government is so informed and asked to comment.

If the source provides well-documented information that a case has erroneously been considered clarified because the Government's reply referred to a different person, does not correspond to the reported situation or has not reached the source within the six-month period described above, the Working Group resubmits the case to the Government, requesting it to comment. In such instances the case is again listed among the unclarified cases and a specific explanation of the situation is given in the Working Group's report to the Commission on Human Rights, indicating the errors or discrepancies.

Any additional substantive information which the source submits on an outstanding case is placed before the Working Group and, fol-

lowing its approval, transmitted to the Government concerned. If the additional information received amounts to a clarification of the case, the Government is so informed.

The Working Group retains cases in its files as long as the exact whereabouts of the missing persons have not been determined. It maintains that the State's responsibility for disappearances continues to exist irrespective of changes of Government, even though the new Government shows greater respect for human rights than the Government in power at the time the violations occurred. The Working Group will agree to close a case in its files when the competent authority specified in the relevant national law pronounces, with the concurrence of the relatives and other interested parties, that the person reported missing is presumed dead. In exceptional circumstances the Working Group may decide to discontinue consideration of a case which the families have decided not to pursue, or where the source is no longer in existence or unable to follow up the case.

While the Working Group's mandate does not extend beyond the stage at which a disappeared person's fate is made known, other human rights procedures of the United Nations can take up where the Working Group leaves off. If the reply from the Government concerned clearly indicates that the missing person has been found dead, tortured, in arbitrary but acknowledged detention, or to be a victim of other human rights violations for which government officials or groups or individuals linked to them are allegedly responsible, the case is brought to the attention of the appropriate mechanism or body.

Protection of relatives and witnesses

The Working Group is also concerned with the protection of relatives of missing persons, their legal counsel, witnesses to disappearances or their family, members of organizations of relatives and other non-governmental organizations or individuals concerned with disappearances.

In cases of persecution, intimidation or reprisals against these persons, the Working Group contacts the Government concerned with the appeal that they take all necessary steps to protect the fundamental rights of the persons concerned and to investigate the case thoroughly in order to put an end to the intimidation or reprisals.

Prompt intervention is often required to protect relatives, witnesses and other persons involved in a disappearance. Allegations of intimidation, persecution or reprisals are transmitted directly to the relevant Ministers of Foreign Affairs by the most direct and rapid means. The Working Group has authorized its Chairman to transmit such information between sessions.

III. Declaration on the Protection of All Persons from Enforced Disappearance

On 18 December 1992 the General Assembly, by resolution 47/133, proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance. The Working Group, which participated actively in the elaboration of the Declaration, welcomed it as a milestone in the united efforts to combat the practice of disappearance and considered that it constituted an important basis for its own future work. Many proposals and recommendations which the Working Group had adopted over the years and published in its annual reports were reflected in the Declaration.

According to the Declaration, the systematic practice of disappearance is of the nature of a crime against humanity and constitutes a violation of the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture; it also violates or constitutes a grave threat to the right to life. States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to make them continuing offences under criminal law and to establish civil liability.

The Declaration also refers to the right to a prompt and effective judicial remedy as well as unhampered access by national authorities to all places of detention, the right to habeas corpus, the maintenance of centralized registers of all persons in detention, the duty to investigate fully all alleged cases of disappearance, the duty to try alleged perpetrators of disappearances before ordinary (not military) courts, the exemption of the criminal offence of acts of enforced disappearance from ordinary statutes of limitations and special amnesty laws and similar measures which might lead to impunity.

The World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, welcomed the adoption of the Declaration by the General Assembly and called upon all States "to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances". The World Conference reaffirmed that "it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators".

Since 1993, the Commission on Human Rights has regularly adopted resolutions in which it invited all Governments to take appropriate legislative or other steps to prevent and punish the practice of enforced disappearances, with special reference to the Declaration, and to take action to that end nationally, regionally and in cooperation with the United Nations. In the same resolutions, the Commission requested the Working Group to take into account the provisions of the Declaration, and invited it to cite in future reports any obstacles to the proper application of the Declaration and to recommend means of overcoming them.

Despite various efforts by the Working Group to remind Governments of their obligation to implement the provisions of the Declaration by taking appropriate legislative, administrative, judicial or other measures, very little progress has been made in practice. With some exceptions, States have not begun to take consistent steps to incorporate the principles set out in the Declaration in their national legislation. The Working Group has repeatedly stressed that the obligation to implement the Declaration applies not only to States where acts of enforced disappearances actually occurred in the past or have continued up to the present day; in particular, legislative and other preventive measures shall be taken by all States in order to ensure that acts of disappearance will not occur in the future.

The Working Group regularly transmits to the Governments concerned a summary of allegations received from relatives of missing persons and non-governmental organizations with regard to violations of the Declaration in their respective country, inviting them to comment thereon if they so wish.

The full text of the Declaration is reproduced in the annex to this Fact Sheet.

IV. How to report cases of disappearance

Information on the enforced or involuntary disappearance of a person may be submitted in any written form—in urgent cases preferably by telefax—to:

The Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights

United Nations High Commissioner/Centre for Human Rights

United Nations

1211 Geneva 10, Switzerland

Fax No. (41 22) 917 0092

The report must clearly identify the person or organization making it and must include a contact address. When a case is submitted by a non-governmental organization, the Working Group requires it to act directly or indirectly at the request of the family or friends of the victim. It is necessary for the submitting organization to remain in contact with the family or friends in order to be able to forward to them any information it receives on the results of the Working Group's endeavours.

As is explained more fully above, a report should contain the following minimum information:

Full name;

Day, month and year of disappearance;

Place of disappearance;

Those considered responsible;

Information about any search which has been made.

Experience has shown that information on the enforced or involuntary disappearance of a person varies greatly in detail by reason of the nature of each case and the surrounding circumstances. Forms designed to assist relatives in formulating reports on disappearances can be obtained from the United Nations High Commissioner/Centre for Human Rights. While it is important to receive as much information as possible, missing details should not prevent the submission of reports. However, the Working Group can only process clearly identified individual cases containing the minimum elements of information outlined in section II.

ANNEX

Declaration on the protection of all persons from enforced disappearance

(Proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992)

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling its resolution 33/173 of 22 December 1978, in which it expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the

anguish and sorrows caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

1. *Proclaims* the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;

2. *Urges* that all efforts be made so that the Declaration becomes generally known and respected.

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.

3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State

concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carry out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the

event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.

3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

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